



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Extension of Period of Limitations for Dissolved
Corporations

This Field Service Advice responds to your memorandum dated March 10, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

X

Y

Z

State A

State B

State C

Statute 1

Statute 2

Statute 3

Statute 4

Statute 5

Statute 6

Statute 7

Statute 8

Statute 9

Year 1

Year 14

Year 16

Year 17

Taxable Period 1

Taxable Period 2

Taxable Period 3

Taxable Period 4

ISSUES:

1. May dissolved State A and State C corporations enter into valid consents extending the period of limitations to assess federal income tax?
2. During what period of time may a dissolved State A corporation enter into a valid consent extending the period of limitations to assess federal income tax?

3. During what period of time may a dissolved State C corporation enter into a valid consent extending the period of limitations to assess federal income tax?
4. Who is authorized to execute a consent on behalf of a dissolved State A corporation?
5. Who is authorized to execute a consent on behalf of a dissolved State C corporation?

CONCLUSIONS:

1. Both State A and State C dissolved corporations continue to exist for the purpose of winding up business affairs and may enter into valid consents extending the period of limitations to assess federal income tax. Statute 1; Statute 2.
2. There is no specified time limit during which dissolved State A corporation continues for the purpose of winding up its business affairs. Statute 1.
3. There is no specified time limit during which dissolved State C corporation continues for the purpose of winding up its business affairs; however, a dissolved State C corporation must commence any cause of action within two years after the date of the dissolution. Statute 2.
4. The proper person to execute such consents for a dissolved State A corporation is the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act for a dissolved State A corporation, whether or not that person was the same individual who signed the return. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349.
5. The proper person to execute such consents for a dissolved State C corporation is a director of the corporation. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul 84-165, 1984-2 C.B. 305. Statute 3.

FACTS:

X was incorporated in State A on September 30, Year 1, and reported its taxable income on a fiscal year ending September 30. On November 7, Year 14, X was acquired by Y, a State B corporation; Y is a wholly owned subsidiary of Z, a State C corporation, organized on November 1, Year 14, as a holding corporation for X and Y. X filed a short period return for Period 2 as its final return. Thereafter, X was included in the consolidated income tax returns filed by Z.

An examination of X was initiated on June 19, Year 16. The scope was expanded to include Z on February 17, Year 17. Most of the adjustments result from the taxpayer's inability to substantiate items or its attempts to create basis with accounting entries which are not supported by expenditures of cash or transfers of assets. The revenue agents involved in the examination last met with X in October, Year 17, at which time the representative for X and Z requested that the case be forwarded to Appeals for their consideration. The representative indicated that X and Z would be willing to consent to extend the statute of limitations on the returns filed by X and Z to allow administrative consideration of the unagreed issues by Appeals.

The revenue agent learned from the Office of Secretary of State A that the charter of X had been revoked for nonpayment of franchise fees. The representative of X offered to reinstate X in State A in order to execute consent forms. To date the representative has been unable to provide evidence from the Office of Secretary of State A to show that the charter of X has been reinstated.

A law firm informed the revenue agent by certified letter dated December 31, Year 17, that Y and Z were being dissolved and liquidated as of the date of the certified letter. The certified letter also states that a liquidating trust has been established to administer the liquidation of the assets and the payment of creditors and that the law firm will represent the liquidating trust as tax counsel and will represent X, Y, and Z with respect to the liquidation. In addition, the letter states that the officers of the corporations and their taxpayer representatives will continue to be the contact persons with respect to the Internal Revenue Service.

LAW AND ANALYSIS

Pursuant to Internal Revenue Code section 6501, the general rule is that tax must be assessed within three years after the return was filed; however, at any time prior to the expiration of the prescribed time, the Secretary and the taxpayer may consent in writing that tax may be assessed after the expiration of the three year period. I.R.C. § 6501(c)(4). With respect to a corporation, the appropriate person to sign the consent agreement is the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul 84-165, 1984-2 C.B. 305.

With respect to a dissolved corporation, "[I]n states in which a dissolved corporation continues in existence for the purpose of winding up its affairs, any authorized officer may sign a consent during the period the corporation continues in existence under state law." Rev. Rul. 83-41, 1983-1 C.B. 349. In State A, the Secretary of State shall administratively dissolve a corporation that does not pay its franchise fees. Statutes 4 and 5. An administratively dissolved corporation in State A

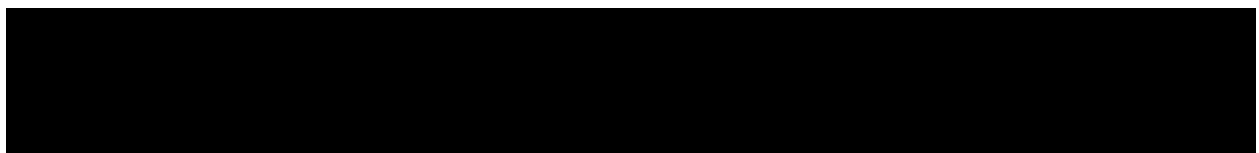
continues its corporate existence to wind up and liquidate its business. Statutes 6 and 7. An administratively dissolved corporation in State A may apply to the Secretary of State for reinstatement within five years after the effective date of dissolution; when the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution. Statute 8. According to the laws of State A, whether or not the corporate charter of X is reinstated, X continues to exist for the purposes of winding up its business. Statutes 1, 5, and 8.

“[T]he Service will generally apply the rules applicable to execution of the original returns to consents to the extension of time to make an assessment.” Rev. Rul. 83-41, 1983-1 C.B. 349. Since an officer of X was required to sign the original returns, for Taxable Periods 1 and 2, an officer of X is also the proper person to execute a consent on behalf of X for Taxable Periods 1 and 2, those periods before X filed a consolidated return with Z.

A dissolved corporation in State C also continues for the purpose of prosecuting or defending proceedings of any kind and of enabling it gradually to settle and close its business. Statute 2. Any action available to or against it must be commenced within two years after the date of dissolution. *Id.* Upon the dissolution of a corporation by decision of the directors (and the shareholders if stock has been issued), the directors become trustees with full power to settle the affairs of the corporation. Statutes 3 and 9. “[I]n states where directors are authorized to act for a dissolved corporation, any one of the directors may sign the consent for the corporation.” Rev. Rul. 84-165, 1984-2 C.B. 305.

A member of a consolidated group consents to all of the consolidated return regulations prescribed under Internal Revenue Code section 1502 upon the filing of a consolidated return. See *Lone Star Life Ins. Co. v. Commissioner*, T.C. Memo. 1997-465, 74 T.C.M. (CCH) 904 (1997). Included in the consolidated return regulations is the provision that the common parent “shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year.” Treas. Reg. 1.1502-77(a). Since X filed a consolidated return with parent corporation Z for Taxable Periods 3 and 4, a director of Z is the proper person to sign a consent on behalf of X and on behalf of Z for Taxable Periods 3 and 4.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



[REDACTED]

[REDACTED]

If you have any further questions, please call (202) 622-7950.

By: _____
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(Tax Practice and Procedure)